was the genuine desire of the appellants' solicitors to make available all the evidence before the court and the fortuitous circumstance of the police not replying earlier to him and also his mistake in not realising that the Appeal Record could have been filed without the photographs; (4) the grant of an extension of time cannot prejudice the respondent which is an insurance company of means and the claim comes within the jurisdiction of the subordinate courts. There is the additional but important factor that the court has been denied material evidence which, to the knowledge of the respondents' solicitors, was in existence but not disclosed. I do not go so far as to say that the respondents' solicitors suppressed the evidence but take the view that any potential injustice to the infant appellant, if it can be redressed, should be redressed. There is material on which I can exercise my discretion.

Therefore, in spite of the fumblings of his solicitor, I do not think that the infant appellant should be denied the opportunity to have his appeal heard. Accordingly, I grant the order as prayed.

Application allowed.

Solicitors: *Soh & Partners; Rajah & Tann.*

E.G. TAN & CO. (PTE) v. LIM & TAN (PTE) & ANOR.

[O.C.J. (Chua J.) November 26, 1986]
[Singapore – Suit No. 2860 of 1981]

Tort – Detinue and Conversion – Shares obtained by fraud – Sale of shares to second defendant – Whether second defendant was bona fide purchaser for value without notice.

Estoppel – Estoppel by negligence – Elements of.

Stock and Shares – Detinue and conversion – Shares obtained by fraud.

The plaintiffs were at all material time stock and share brokers and a member of the Stock Exchange of Singapore Ltd. (the SES). The plaintiffs claimed from the second defendant, Sim Kok Wah, the return of delivery of share certificate No. 89407 and the transfer attached thereto for 1000 Pan Malaysia Cement Works Bhd. shares and damages. This certificate was bought by the second defendant from one Khoo Chee Keong who obtained the certificate fraudulently from the plaintiffs.

The plaintiffs have wholly discontinued the present action against the first defendants.

The second defendant contended that (a) the plaintiff as stock and share brokers have negligently allowed Khoo to obtain possession of the share certificate; (b) the second defendant was a *bona fide* purchaser for value of the said shares and had no notice that Khoo had obtained the share certificate fraudulently.

The second defendant submitted that in the premises the plaintiffs are estopped by their own negligence from demanding the return of the share certificate. He also contended that as for damages the plaintiffs are only entitled to the loss of the value of the shares between March 1981 and May 1986.

Held: (1) in the present case the second defendant was not a *bona fide* purchaser for value without notice;

(2) the necessary elements of negligence are (a) a duty of care owed to the party seeking to rely on the estoppel and (b) the negligent conduct must be proximate or real cause of the loss;

(3) mere negligence in dealing with one's own property does not give rise to an estoppel;

(4) the plaintiffs owed the defendant no duty of care;

(5) the only loss suffered by the plaintiff was the loss of the value of the shares and the plaintiffs are entitled to damages for $10,000. The second defendant must deliver to the plaintiffs the share certificate No. 89407 together with the relative transfer forms. The plaintiffs were entitled to the bonus issues and the dividends declared;

(6) the plaintiffs were entitled to the share certificate No. 89407 and the transfer forms attached.

Cases referred to:

(1) *R.E. Jones Ltd.* v. *Waring & Gillow Ltd.* [1926] A.C. 670.

(2) *Mercantile Bank of India Ltd.* v. *Central Bank of India Ltd.* [1938] 1 All E.R. 52.

(3) *Farquharson Brothers & Co.* v. *C. King & Co.* [1902] A.C. 325, 335 to 336.

CIVIL SUIT.

Ng Kian Fong for the plaintiffs.
Denis Tan for the second defendant.

Cur. Adv. Vult.

Chua J.: The plaintiffs have wholly discontinued this action against the first defendants.

The claim of the plaintiffs against the second defendant is the return or delivery of share certificate No. 89407 for 1,000 Pan Malaysia Cement Works Bhd. registered in the name of Chee Kheng Tong together with the relative transfer attached thereto. Damages for detention and/or conversion of the said share certificate No. 89407.

The plaintiffs were at all material times stock and share brokers and a member of the Stock

Exchange of Singapore Ltd. (the SES) and so were the first defendants.

The plaintiffs were in possession of share certificate No. 89407 which had been bought by the plaintiffs' clients Lee Ah Bee. On or about March 19, 1981, one Khoo Chee Keong came to the plaintiffs' office, fraudulently misrepresented himself as having authority to collect the shares for Lee Ah Bee, and collected two share certificates of Pan Malaysia Cement Works Bhd. of 1000 each together with the duly executed transfer forms, for which Khoo Chee Keong tendered a cheque for $28,308.00. One of the share certificates collected by Khoo Chee Keong was certificate No. 89407 (Ex P.1).

The cheque given by Khoo to the plaintiffs was dishonoured on March 21, 1981. The plaintiffs then made a police report and informed the SES of the fraud and the report of the fraud was circularised by the SES to all its members.

Khoo was arrested and charged for cheating. He pleaded guilty and was sentenced to 12 months' imprisonment on June 6, 1981. Police investigations revealed that Khoo had sold the 1000 shares to the first defendants and the other 1000 shares to the second defendant. The first defendants have returned the 1000 shares to the plaintiffs. The second defendant did not return the 1000 shares requested by the plaintiffs. The plaintiffs gave a replacement certificate to Lee Ah Bee from their stock.

The second defendant says that he had known Khoo for about 1 year prior to March 1981. Sometime in March 1981, Khoo called at his office and said that he needed money urgently to settle some gambling debt. Khoo said that he had 1000 Pan Malaysia Cement shares which he would like to sell to the second defendant at market price which at that time was about $14.10 or so and the price was rising.

The second defendant agreed to buy the shares and they arranged to meet outside the Lido Theatre which was just across the road from the second defendant's bank, the Chase Manhattan Bank. He went to the bank and got some cash. He met Khoo and handed over $14,200 cash to Khoo who handed the share certificate Ex P.1 with the transfer form attached to him.

Two weeks later he was called up by the police and was told that Khoo had fraudulently obtained the shares from a sharebroker firm. He gave a statement to the police and was told to keep the share certificate pending the outcome of the criminal case against Khoo.

Subsequently he learned that Khoo was convicted and sentenced. No long after that he received a letter from the plaintiffs' solicitors dated June 13, 1981, demanding the return of the shares to the plaintiffs.

The second defendant then sought legal advice. Subsequently in September 1981 he was advised by his solicitors to have the shares registered in his name. He then contacted by telephone Alfred Lim Eng Teck a remiser with G.K. Goh Securities (Pte) and told him how he came to buy the 1000 shares and about the legal advice he was given. Lim agreed that that was a good move. Eventually he handed the share certificate Ex P.1 and the transfer form to Lim for registration after signing the transfer form. Subsequently he was told by G.K. Goh Securities (Pte) that the shares could not be registered in his name. His solicitors then took up the matter of registration with the Registrar of Pan Malaysia Cement Works Bhd.

The second defendant denies that the plaintiffs were entitled to the return of the share certificate Ex P.1 for the following reasons:

(a) The plaintiffs as stock and sharebrokers, have negligently allowed Khoo to obtain possession of the share certificate;

(b) The second defendant is a *bona fide* purchaser for value of the said shares and had no notice that Khoo had obtained the share certificate fraudulently.

The second defendant submits that in the premises the plaintiffs are estopped by their own negligence from demanding the return of the share certificate and because the second defendant is the lawful owner of the shares.

Was the second defendant a purchaser for value, in good faith and without notice of the fraud?

The second defendant has given evidence of his relationship with Khoo and that he knew of the following facts about Khoo – he was then a commodities broker; he was gainfully employed in a respectable position; he seemed to be quite well; he was a devout Christian and went to Church regularly and took part in Church activities. He

became friendly with Khoo and they met often and had poker sessions with Khoo and two or three others friends.

Counsel for the second defendant asks, in those circumstances, why should the second defendant be put on notice when Khoo, a friend, wanted to sell his shares to him.

However well the second defendant knew Khoo he should have been wary and inquired how Khoo had acquired the shares.

Evidence was adduced by the plaintiffs of what the second defendant told the remiser Alfred Lim. Lim said that he knew the second defendant and had acted in the past as his remiser in the sale and purchase of stocks and shares. On or about September 25, 1981, the second defendant telephoned Lim to seek advice regarding 1000 Pan Malaysia Cement shares which the second defendant said "he acquired by way of, in satisfaction of a gambling debt." He gave the advice to have the shares registered in the second defendant's name. The second defendant then brought the share certificate and the transfer deed to G.K. Goh Securities (Pte) and sought the help of the firm to have the shares registered in his name. Lim said:

"It is not the usual practice to ask clients to register shares into their names but in this instance my advice to 2nd defendant was to register it into his own name because he mentioned to me that he had acquired the shares in satisfaction of a gambling debt."

The second defendant, however, in evidence said that what he told Lim was that he bought the shares from a friend who needed money urgently to settle a gambling debt and that he had sought legal advice and was advised to have the shares registered in his name. Lim agreed that that was a good move.

Lim was emphatic that the second defendant told him on the telephone that his friend had lost some money to him in gambling over some card games. He said that he knew of clients who bought shares from friends and he would advise them to register the shares into their names to ensure that they would get a good title and that they were not stolen or forged shares. He said that private sales of shares were infrequent and he would advise his clients to be wary. If the second defendant had told him that the shares were fraudulently obtained he would not have advised him to have the shares registered into his name. The second defendant did not at any time tell him that these shares were fraudulently obtained.

Counsel for the second defendant suggested that Lim had a poor recollection or he had misunderstood the second defendant and submitted that Lim's evidence is unreliable.

I do not think that Lim had a poor recollection or that he misunderstood the second defendant. I accept Lim's evidence that the second defendant told him that he (the second defendant) obtained the shares in satisfaction of a gambling debt.

As to the payment for the shares, the second defendant said that he went to his bank to cash about $6000 to $7000 and with the cash he already had in hand, he gave $14,200 to Khoo. However, in his Defence he alleged that he paid $14,600 for the shares. In the statement of facts given by the prosecution at the trial of Khoo, it would appear that Khoo told the police that he sold the shares to the second defendant for $14,500.

The second defendant was unable to produce the cheque stub for the cash that he said he drew from the bank; he had destroyed the cheque stub in 1981 or 1982. He was also unable to produce the monthly bank statement which would show that he had drawn out the cash. He had also destroyed the monthly bank statements after he had closed the bank account in 1982.

He at first said that he recently asked the bank for the bank statements but was told that they could not give the statements as he no longer has an account with them. He then said what he meant to say was that the bank asked for his bank account number and he could not give it as he had forgotten it. He also said that he was instructed by his solicitors to go and see the bank about the statements. He did not go in 1981 because he was not asked by his solicitors to do so and it did not occur to him then that the question of his payment to Khoo would be relevant. He had consulted his solicitors and had left everything to them.

I cannot believe that he would not have a record of his bank account number with the Chase Manhattan Bank. It would be an easy matter for him or his solicitors to request the bank to supply a copy of the relevant bank statement. The second defendant could also have called Khoo to substantiate his story that he paid Khoo for the shares and how much. There is no evidence that Khoo was not available to give evidence.

I find that the second defendant was not a *bona fide* purchaser for value without notice.

The second defendant submits that the plaintiffs are estopped by their own negligence from demanding for the return of the share certificate from him.

The evidence is that on or about March 19, 1981, Khoo went to the office of the plaintiffs, represented himself as having authority to collect the shares, tendered a cheque for $28,308.00 and collected the shares. The plaintiffs say that it was the practice for stockbroking firms to deliver share scrips against payment by cheque. Gimson Chua Boon Kiat, the Manager of plaintiff Company, when questioned by counsel for the second defendant as to the procedure when a client had given the instructions to buy shares said:

"The client will call up the remiser to place X shares. The remiser would place the order through the central buyers to put on the board for the quotation of the price. Once the price on the board matches the client's order the remiser would execute the contract note. The remiser would sign on the business done chit which would be passed to the accounts side of the firm for processing. The contract note would be sent out on the following day to the client. When the Company received the share certificate and executed transfer form directly from the seller or from the stock exchange depending on the type of contract ... when we received these documents we would send debit note to the client and inform him that the shares have arrived and ready for collection. The client will either pay in cash or by cheque. The client can either send the cheque to us by post or send a representative to pay and collect on his behalf or he could come personally. Usually the client would approach the firm's counter and give us a cheque and ask for the shares. It is the practice of all stockbroking firms that .....

If the client produces the debit note to the counter clerk together with a cheque payable to us we would check through our records whether the shares had been picked up. The second form of payment is that the client produce a cheque and ask for the counter without the debit note. In this case we would ask him his name. We would then check through our records whether the counter ... there are always 4 copies of the contract note. The first copy sent to the client; the second copy is for the accounts room, the third copy is the debit note sent to the client and the fourth copy is kept by the payment dept. So when a client comes to pick up shares the payment side would run through the ledger to see whether it had been settled or still outstanding. If not settled we would accept the payment and hand over the share certificate and the executed transfer.

T: Are you required to verify the identity of the person who has come to make the payment and collect the share cert. and transfer is the actual client?

If the client produces the debit note to us we rely on the debit note and we accept that he is the client or a representative of the client authorised to collect and pay. If a person comes without a debit note to collect we will ask him the counter and the client's name, whether he is picking up upon the behalf of a client or himself. He gives the client's name, we will check through the ledger for the counter and the name. Once the ledger is outstanding we would give the share cert. and the transfer to the person.

T: Am I correct to say that you take no steps to verify that the person collecting the share cert. and the transfer and making the payment is the actual client or a person authorised by the actual client?

That is correct. The usual practice is when a person gives us a cheque we would accept it and release the shares.

T: Do you at all verify that the cheque handed over was issued by the client?

We only check on the amount, the figures and the wordings. No, we were not concerned with the person who issued the cheque."

The necessary elements of estoppel by negligence are: (1) a duty of care owed to the party seeking to rely on the estoppel and (2) the negligent conduct must be the proximate or real cause of the loss, (See *R.E. Jones Ltd.* v. *Waring & Gillow Ltd.*[1]; *Mercantile Bank of India Ltd.* v. *Central Bank of India Ltd.*[2]; *Spencer Bower & Turner* – The Law Relating to Estoppel by Representation 3rd Ed. pages 72-79; 16 *Halsbury*, 4th Ed., paragraphs 1620-1623).

The plaintiffs in this case owed the second defendant no duty of care. The plaintiffs had no reason to think that Khoo was not the representative of Lee Ah Bee and all they did was to deal with their property in the usual course of business – delivery against payment. The plaintiffs had not misled the second defendant in any way.

The fact that mere negligence in dealing with one's own property does not give rise to an estoppel was forcibly emphasised by Lord Macnaghten in *Farquharson Brothers & Co.* v. *C. King & Co.*[3]

As regards damages the second defendant contends that the plaintiffs are only entitled to the loss of the value of the shares between March 1981 and May 1986 (the date of the hearing) which the plaintiffs have agreed amounted to $10,000.

The evidence is that Pan Malaysia Cement had after March 1981 declared bonus issues and dividends, with the result that under Certificate No. 89407 there are now 8000 shares. The dividends declared are held by the Registrar of the Company pending the outcome of this case.

The contention of the plaintiffs is that if they had not given the replacement shares from their stock to Lee Ah Bee they would have received the bonus issues and the dividends in respect of the replacement shares. They submit that their loss would be in all $19,000.

I agree with counsel for the second defendant that the only loss suffered by the plaintiffs is the loss of the value of the shares which amounted to $10,000. The plaintiffs, in respect of Certificate No. 89407, have not lost the bonus issues and the dividends. In the normal course of events the replacement shares would have been sold by the plaintiffs and not kept by them to earn the bonus issues and the dividends.

I assess damages at $10,000.

In the result there will be judgment for the plaintiffs with costs. The counterclaim of the second defendant is dismissed with costs.

There will be an order that the second defendant deliver to the plaintiffs the share Certificate No. 89407 together with the relative transfer form and that the plaintiffs are entitled to the bonus issues and the dividends declared. There will also be an order that the second defendant pay to the plaintiffs $10,000 damages.

Order accordingly.

Solicitors: *Ng Kian Fong & Co., Chor Pee & Co.*

SIM LENG CHUA v. J.E. MANGHARDT

[A.C.J. (Chan Sek Keong J.C.) February 18, 1987]
[Singapore – Suit No. 336 of 1986]

Practice and Procedure – Application to strike off plaintiff's action – Abuse of process of court – Applicability of "Riddick principle" – R.S.C. 1970 O.18 r.19.

Practice and Procedure – Discovery – Documents – Defamatory remarks in – Whether private interest of plaintiff prevails against public interest.

In Suit No. 4049 of 1982 the plaintiff in this action sued a company called Interfood for certain remedies. During the course of discovery of documents in that suit, the plaintiff discovered certain defamatory remarks made by the present defendant to a third party about the plaintiff. The plaintiff then sued the defendant for damages for defamation. The defendant applied to strike out, on the ground of abuse of process of court, the action of the plaintiff for damages for defamation. The Assistant Registrar dismissed the application. The defendant appealed.

The main ground of appeal was whether the principle in *Riddick* v. *Thames Board Mill Ltd.*(1) applied to the present case. The *Riddick* principle states that "Public interest requires that documents disclosed on discovery are not to be made use of except for the purpose of the action in which they are disclosed."

Held: (1) the private interest of the plaintiff did not prevail against the public interest;

(2) if there were a public interest in his being allowed to litigate or enforce his rights in court, it would not override the public interest in full and frank disclosure in discovery proceedings;

(3) the action should be struck out on the ground that it was an abuse of process of court.

Cases referred to:

(1) *Riddick* v. *Thames Board Mills Ltd.* [1977] 3 All E.R. 677; [1977] Q.B. 881; [1977] 3 W.L.R. 63.
(2) *Williams and Humbert Ltd.* v. *W&H Trade Marks (Jersey) Ltd.* [1986] 2 W.L.R. 24.
(3) *Hubbuck & Sons Ltd.* v. *Wilkinson* [1899] 1 Q.B. 86.
(4) *Medway* v. *Doublelock Ltd.* [1978] 1 W.L.R. 710.
(5) *Halcon International Inc.* v. *The Shell Transport & Trading Co.* [1979] R.P.C. 97.
(6) *Church of Scientology of California* v. *Department of Health and Social Security* [1979] 1 W.L.R. 723.
(7) *Rank Film Ltd.* v. *Video Centre* [1981] 2 W.L.R. 668.
(8) *Norwich Pharmacal Co. & Ors.* v. *Customs & Excise Commissioners* [1974] A.C. 133.
(9) *Sony Corpn.* v. *Time Electronics* [1981] 3 All E.R. 376.
(10) *Home Office* v. *Harman* [1982] 1 All E.R. 532.
(11) *Sybron Corporation* v. *Barclays Bank PLC* [1985] 1 Ch. 299.
(12) *The Distillers Co. (Biochemicals) Ltd.* v. *Times* [1975] 1 All E.R. 41.

APPEAL FROM REGISTRAR.

Pauline Tan for the plaintiff.
Margaret Neo for the defendant.

Cur. Adv. Vult.

Chan Sek Keong J.C.: This is an appeal by the defendant against the decision of the Assistant Registrar dismissing his application to strike out, on the ground of abuse of process of court, the action of the plaintiff for damages for defamation. The action arose in the following circumstances. In Suit No. 4049 of 1982 ("the Interfood action," which is currently part-heard), the plaintiff in this action as plaintiff in that action sued Interfood Ltd ("Interfood") a company in which the defen-